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LESOTHO

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I. LAND AND PEOPLE

A. The land

1. Lesotho is a small country lying towards the southern tip of Africa. At 30,000 km² in area, Lesotho is one of the smallest countries within the African continent. It is situated between 28 degrees and 31 degrees south and between 27 degrees and 30 degrees east. This puts Lesotho right within the Republic of South Africa where to the north and west Lesotho shares its boundary with the predominantly Sesotho- and Afrikaans-speaking Orange Free State, to the south is the predominantly Xhosa-speaking Eastern Cape, and in the east is the Zulu-speaking province of Kwazulu-Natal.

2. Though completely enclosed by South Africa Lesotho's topography is in complete contrast to its neighbour. It is mountainous with the highest peak being Thabana-Ntlenyana at 3,482 m above sea level. Lesotho is the only country in the world with no land falling below 1,400 m above sea level. Between the eastern plateau and the so-called lowlands in the west are the Maloti, a series of high mountain ranges drained by rivers which flow in deep gorges in a generally south-westerly direction. The mountains show serious erosion caused by chronic overgrazing estimated at 150 to 300 per cent.

B. The people

1. Population

3. The population of Lesotho is at present estimated at 2,028,750 of which 51 per cent is female. As per 1986 estimates the population of Lesotho was increasing at a natural rate of 2.6 per cent which had been constant for the previous five years. The projections put this figure at 2.8 per cent by 1996. If this rate of population increase is not curtailed, the population could be expected to more than double by the year 2022.

4. This will create great problems associated with population increase. Pressure on the already dwindling natural resources will escalate. Population density on the 9 per cent of the land that is arable stands at 700 persons per km², a far cry from 1976 when the respective figures were 13 per cent and 443 persons per km². Lesotho's population growth is not only a danger to the arable land, but with 45-46 per cent of the population under 15 years of age, Lesotho's unemployment rate of 35-40 per cent can be expected to get worse as more young people join the labour force.

5. Unemployment is not the only problem. There are other obvious problems such as an increasing demand for social services, shortage of foodstuffs, homelessness, and a decline in the rate of overall economic growth. It is worth mentioning here that the Government of Lesotho has enacted a population policy. The goal of the policy is to reduce the fertility rate of the population from the current 5.8 to 2.2 by the year 2011 through a series of policies and pragmatic measures.

2. Demographic data

6. Estimated population 1995

Females	1,064,937
Males	1,011,691
Total	2,076,628

7. Population census 1986

	Lesotho	Urban	Rural
Females	816 530	119 787	696 743
Males	778 556	105 692	672 874
Total	1 565 086	225 479	1 369 617

The last population census was held in 1996, but the data is still being processed. It will be available in the first quarter of 1998.

8. Percentage of population living in urban areas

1976	14.0
1994	18.5

9. Vital indicators in 1976, 1986 and 1994

	1976	1986	1994
(a) Crude birth rate (per 100 population)	37	38	35
(b) Crude death rate (per 100 population)	14	12	13
(c) Rate of natural increase (per 100 population)	2.3	2.6	2.3
(d) Doubling time (in years)	30.4	27.0	29.2
(e) Estimated total number of live births	45 022	60 800	70 680
(f) Life expectancy at birth			
Female	52.7	57.2	57.2
Male	49.3	53.5	53.5
(g) Infant mortality rate (per 1,000)	-	85	80
(h) Child mortality rate (per 1,000)	-	60	-
(i) Maternal mortality rate (per 100,000 live births)	-	-	282
(j) Age dependency ratio	-	-	80.8
(k) Sex ratio (overall)	93	95	95
(l) Total fertility rate	5.9	5.3	5.3

10. Average national household size

1976	5.0
1986	5.2

11. Age distribution of projected population in 1995

Age	Females	%	Males	%	Total	%
0-4	151 221	14.2	152 765	15.1	303 986	14.6
5-9	136 312	12.8	136 578	13.5	272 890	13.1
10-14	132 052	12.4	131 520	13.0	263 572	12.7
15-19	115 013	10.8	111 286	11.0	226 299	10.9
20-24	99 039	9.3	89 029	8.8	188 068	9.1
25-29	83 631	7.8	72 842	7.2	156 473	7.5
30-34	67 091	6.3	61 713	6.1	128 804	6.2
35-39	53 247	5.0	52 608	5.2	105 855	5.1
40-44	42 597	4.0	45 526	4.5	88 123	4.2
45-49	36 208	3.4	38 444	3.8	74 652	3.6
50-54	35 143	3.3	37 433	3.7	72 576	3.5
55-59	29 818	2.8	27 316	2.8	57 134	2.6
60-64	21 799	2.0	17 199	1.7	38 998	1.9
65-69	20 234	1.9	15 175	1.5	35 409	1.7
70-74	15 974	1.5	10 117	1.0	26 091	1.3
75+	25 558	2.4	12 140	1.2	37 698	1.8

12. Population density per km

Year	Total area	Arable area
1976	40.0	306
1986	53.0	478
1995	68.0	760

3. Education

13. Lesotho is one of the few African countries with high adult literacy (72 per cent). The education system of Lesotho has two main goals: (a) the provision of basic education for all; and (b) the provision of sufficient

numbers of trainees with appropriate qualifications and technical and managerial skills to secure the development of the modern sector of the economy.

14. Teaching is initially in Sesotho although English is poised to take over because of a rapid mushrooming of English-medium private schools.

15. The Ministry of Education is in charge of the primary schools syllabus as well as the setting of standard 7 (final year of primary school) examinations which are a natural channel into secondary school education. Secondary education takes three years and it is run jointly with the Education Ministry of the Kingdom of Swaziland. The high school level, which takes two years after the secondary level, is the sole responsibility of Cambridge University in England, but the system is gradually being localized. The high school level is again a channel into institutions of higher learning such as the university, teacher training college and technical and vocational schools.

16. There are currently 1,209 primary schools, 189 secondary schools, 9 technical and vocational schools, 1 teacher training college and 1 university. Most schools are Church owned, but receive a government subsidy.

17. In 1993 there were 354,275 primary school students and 55,312 secondary school students.

18. Educational data

(a) Enrolment in primary school (grades 1-7), by sex and district, at March 1993

District	Male	Female	Total
Botha-Bothe	11 886	12 842	24 728
Leribe	29 711	31 405	62 116
Berea	23 813	24 309	48 122
Maseru	34 513	37 264	71 777
Mafeteng	19 706	23 185	42 891
Mohale's Hoek	15 097	18 824	33 921
Quthing	9 977	12 662	22 639
Qacha's Nek	6 727	8 543	15 270
Mokhotlong	5 710	8 708	14 418
Thaba-Tseka	7 564	11 829	19 393
Total	22 565	32 747	55 312

(b) Teacher-pupil ratio in primary schools at March 1993

District	No. primary schools	No. students	No. teachers	Student-teacher ratio
Botha-Bothe	69	24 728	502	49:1
Leribe	154	61 116	1 217	50:1
Berea	107	48 122	940	51:1
Maseru	199	71 777	1 546	46:1
Mafeteng	135	42 891	858	50:1
Mohale's Hoek	141	33 921	738	46:1
Quthing	111	22 639	436	52:1
Qacha's Nek	83	15 270	297	51:1
Mokhotlong	95	14 418	360	40:1
Thaba-Tseka	115	19 393	398	49:1
Total	1 209	354 275	7 292	49:1

(c) Number of secondary schools and secondary school teacher-student ratio, by district, at March 1993

District	No. secondary schools	No. students	No. teachers	Student-teacher ratio
Botha-Bothe	15	3 903	180	22:1
Leribe	37	10 536	502	21:1
Berea	22	7 409	333	22:1
Maseru	41	14 904	662	23:1
Mafeteng	24	6 556	293	22:1
Mohale's Hoek	15	5 007	220	23:1
Quthing	12	2 977	133	22:1
Qacha's Nek	6	1 335	65	21:1
Mokhotlong	8	1 510	71	21:1
Thaba-Tseka	7	1 175	67	17:1
Total	187	55 312	2 526	22:1

(d) School population ratio

	1991	1994
Primary	1:1595	1:1678
Secondary	1:11017	1:10849

Source: Ministry of Economic Planning and Manpower.

4. Religion

19. The Basotho are predominantly Christian with about 99 per cent indicating some allegiance to the Christian establishment. However, Basotho still hold African traditional beliefs. Out of the 99 per cent about 45 per cent are estimated to be Catholic. The Lesotho Evangelical

(the first Christian Church to arrive in Lesotho) and Anglican Churches share the remaining 55 per cent with the Lesotho Evangelical Church boasting a bigger share. There are also congregations of Methodist, African Methodist Episcopalian, Seventh Day Adventist, independent Pentecostal/born again Churches, such as The Assemblies of God, Jehovah's Witnesses, Baha'i, and a Muslim community.

C. Socio-economic indicators

1. Employment

20. Lesotho has a unique economy. Compared to its counterparts in southern Africa, it is the only country with a GNP-to-GDP ratio greater than 1. What this means is that people of Lesotho earn much of their income from abroad: from mine workers' remittances from South Africa. Lesotho exports about 116,129 unskilled labourers (about 22.7 per cent of the total labour force) to South Africa of whom 94,292 are employed in the mines. Within the country, Government is the largest employer, constituting 10 per cent, but the role of Government as Lesotho's biggest employer is on the decline.

21. Likewise, the economy in South Africa is not doing well. The gold-mining industry is going through technological changes as it attempts to maximize its profit within the ever-declining gold reserves. The new Government of South Africa, unlike the apartheid regime, has a policy of providing employment to its citizens, before allowing non-citizens to be employed. On an annual basis the average number of mine workers employed in South African mines dropped by 14.6 per cent in 1993 and 17.9 per cent in 1994.

22. The second largest employer in Lesotho is the manufacturing and industry sector. This sector only captured about 1 per cent of GNP in 1966, but at the moment it accounts for about 14.2 per cent of GNP.

23. Another important sector at the moment is in the area of construction. The implementation of the Lesotho Highlands Water Project, whereby Lesotho is selling excess water to South Africa and will generate power for local consumption, is a factor that contributed to this sudden boom in the construction sector. The multi-billion-dollar project brought with it the construction of roads and houses, which are meant for the workers on the project. Phase 2 of the Lesotho Highlands Water Project on Mohale Dam is presently undergoing construction.

2. Poverty

24. Poverty in Lesotho is not as yet at the same level as that observed in other sub-Saharan countries, but it is becoming a major problem that needs urgent attention from Government. It has been estimated that a minimum of M 50 per person per month is needed for a person to be considered to be above the poverty line. A poverty-mapping survey conducted by Sechaba Consultants revealed that about 65 per cent of households do not have M 50 per person per month.

25. Other interesting findings of the study were in respect to the distribution of poverty. The study revealed that female-headed households are receiving more than their fair share of the problem. These families are less likely to be able to afford basic education and health care and are less likely to own a latrine.

3. Inflation

26. Inflation, like poverty, is not as fierce as in other African countries. This is in part due to the fact that Lesotho's economy is intertwined with that of South Africa, which is without doubt Africa's strongest economy.

27. The table below shows the trend of Lesotho's inflation from 1992 to 1994. It can be seen from the table that the inflation rate started to decline in the first quarter of 1992 after having peaked at around 20 per cent in the last quarter of 1991, but this downward trend was reversed in the second quarter of 1994.

Rate of inflation
(percentage change)

1992		1993		1994	1995	1996	1997
October	July	October	July	October	October	October	July
19.0	12.0	9.2	8.4	9.8	9.6	9.0	8.9

4. External debt

28. Lesotho's external debt situation is not out of control as was the case before the country embarked on the IMF-led structural adjustment programme. Lesotho's external debt dropped by 1.1 per cent in the last quarter of 1994 from US$ 472.4 million in the previous quarter to US$ 467.4 million. This fall was followed by an increase of 6.4 per cent in the last quarter of 1993. The biggest source of credit for Lesotho is the multilateral organizations.

External debt, by quarter, 1993-1994 (in million US$)

	1993			1994			
	II	III	IV	I	II	III	IV
Total	418.0	427.3	439.3	492.1	471.0	472.4	467.4
A. Bilateral	42.4	41.5	40.8	43.6	43.7	43.7	43.1
Concessional	41.4	40.6	39.9	43.8	41.8	41.9	42.2
Non-concessional	0.95	0.9	0.9	1.9	1.8	1.8	0.9
B. Multilateral	353.7	366.3	382.1	430.6	411.3	406.5	410.0
Concessional	332.2	345.5	359.6	399.8	381.9	378.6	381.8
Non-concessional	21.5	21.1	22.5	30.8	29.4	27.9	28.2
C. Financial institutions	10.6	9.7	8.9	9.5	9.1	16.7	9.8
Concessional	1.3	1.2	0.9	1.0	1.0	0.9	0.7
Non-concessional	9.3	8.5	8.0	8.5	8.1	7.7	9.1
D. Suppliers' credit	11.3	9.8	7.5	6.3	7.0	5.5	4.5

II. GENERAL POLITICAL STRUCTURE

A. Political history and framework

29. The people who are today called the Basotho, Batswana and Bapedi all originated from one cultural cluster, for which we will use the term "Sotho" in our text. This cluster was situated in what is now the southern and western Transvaal. This broadly Sotho cultural cluster emerged between 900 and 1200 AD. By 1450 AD, if not before, some groups migrated from this cluster to what is eventually to be identified as Bapedi. Those who were later to be called Basotho moved south into the Free State and Lesotho. Those now called Batswana remained in the southern Transvaal or moved west into the northern Cape and Botswana, although some migrated back into the Thaba-Nchu area of the Free State in the nineteenth century. These societies adapted to different ecological zones. The Batswana, who lived in a drier climate, tended to develop a more stratified society as large populations were concentrated around sites with abundant water or iron ore. The Basotho, on the other hand, were usually more dispersed given the better ecology of the well-watered plains of the northern Free State and Lesotho.

30. One important site of early settlement was Nts'oana-Tsatsi near present-day Vrede in the northern Free State. Archaeological investigations have revealed that this area was settled as early as 1350, probably by the Bafokeng clan. These were the pioneers of the Sotho groups who settled much of the Free State and Lesotho. They lived closely with the Baroa as well as with the ancestors of the Baphuthi, who were the first Iron Age peoples to settle by the Caledon River Valley. The northern half of the Free State is the true heartland of Sotho settlement. Lesotho, as we know it today, was the southern frontier of this civilization although the upper portion of the Caledon River Valley was very rich and fertile.

31. Chiefdoms of various sizes grew up and declined but there was no centralized kingdom which united these Sotho peoples until the nineteenth century. Although each chiefdom and clan had its particular historical traditions and customs, they shared a broadly similar language and interacted widely as they lived in close proximity and intermarried freely. The Sotho were not alone in this area. The San and certain Khoi groups still lived in the region, often in a symbiotic relationship with the Sotho and other agro-pastoralists. So also, the Hlubi and certain Nguni from east of the Drakensburg had already been settling peacefully among the Sotho for over a century.

32. In the 1820s, conflicts called the lifaqane wars in what was then known as Nguni-land started. When the wars started no one could have foreseen the magnitude of their impact on the overall history of the entire southern African region. One of the effects of the war was the formation of new nations such as the Basotho nation founded by Moshoeshoe and the Swazi nation founded by Sobhuza. Therefore, the Basotho did not exist as a nation before 1820.

33. Moshoeshoe was a pragmatic leader who, together with other chiefs, was able to forge unity among his people and defeated his enemies through diplomacy and military conquest whenever there was a need. He effectively

ruled from 1824. He was also able to defeat the British and the Boers on the battlefield, but was later forced to seek British protection at a time when the Boers were poised to take over Basotho land by force and hence Lesotho was declared a British protectorate on 18 March 1868. Moshoeshoe himself died two years later on 11 March 1870. Moshoeshoe's son Letsie I reigned from 1870 to 1891, followed by Lerotholi (1891-1905), Letsie II (1905-1913), Griffith (1913-1939), Seeiso (1939-1940), Regent Mantsebo (1940-1960), Moshoeshoe III (1960-1990), Letsie III (1990-1995), Moshoeshoe III (1995-1996), Letsie II (1996-the present; he was crowned on 31 October 1997).

34. In 1835 white farmers from the Cape began arriving in Basotholand. Unlike other immigrants, these people were not willing to become Moshoeshoe's subjects. As a result, a series of conflicts erupted between the Basotho and the newcomers. The Basotho were at first able to defeat their opponents, but with time the balance of power shifted in favour of the Boers and the Basotho were spared as a nation by the declaration of Basotholand as a British protectorate.

35. At the time of Moshoeshoe's death the economy of Lesotho was going through an agricultural boom. Surplus grain was exported to the rest of southern Africa, most notably to the white settlers in exchange for cash (hence the beginning of the monetizing of Lesotho's butter exchange). However, the white settlers had other plans for the Basotho, who were valued as labour to work mostly in the diamond mines of Kimberly and other newly-discovered mines in South Africa. The white settler Government therefore made it illegal for the white settlers to buy grain from the Basotho and they started to import grain from Europe. This measure brought down regional grain prices. As a result, this calculated move by the settlers deprived the Basotho of their livelihood. They were forced to seek employment in the mines of South Africa. This was the beginning of the present migrant labour system to South Africa which came at the expense of a decline in agriculture.

36. Loss in agricultural production and the beginning of the migrant labour system inevitably brought with them a decline in the control of the chiefs over their subjects. As they lost their wealth and their following, the chiefs found themselves forgoing relationships with the colonial masters. This new face of the chiefs, who had always played a role of pan-Africanists, left their subjects without any legitimate leadership. It was this fact and the traditional anti-imperialist feelings of the Basotho people that led to the establishment of the first political party. The party, known as the Lekhotla la Bafo, was formed by one Josiel Lefela and the current Prime Minister of Lesotho, Dr. Ntsu Mokhehle, joined the party ranks in 1942. Dr. Mokhehle later formed his own political party in 1952. Formed under the ideology of pan-Africanism, the Basotholand Congress Party (BCP) was naturally regarded as "communist". As a result, the Catholic Church saw it as an enemy of religion, while South Africa saw it as an enemy of apartheid and therefore an enemy of the State. With all these powerful enemies, it was not much of a surprise when two new parties were founded in 1960: the Basotholand National Party (BNP) and the Marematlou Freedom Party (MFP). The BNP was formed, or at least campaigned for prolonged British rule: they preached anti-communist rhetoric and hence became friends with the Catholic Church and the Chiefs.

37. It took more than 90 years for the Basotho to regain political leadership, which was in the hands of the British Commissioner. Dr. Leabua Jonathan was inaugurated as Lesotho's Prime Minister in 1966 and King Moshoeshoe II installed as its first constitutional monarch. Lesotho's newly found democracy did not see its full term of five years as Dr. Jonathan failed to hand over power to the BCP which had won the 1970 elections. Actually, what Dr. Jonathan did was to suspend the 1966 Constitution, declare a state of emergency and rule by decree until he was overthrown by the military in a bloodless coup in 1986. The military handed over power to the civilian Government in 1993, under the leadership of Dr. Mokhehle. This was after three years of an electoral preparatory process when the 1966 Constitution was revised and a vigorous election campaign was followed by elections on 27 March 1993. The BCP won a landslide victory, capturing all 65 constituencies with over 70 per cent of the vote. The turnout was large, with over 70 per cent of all registered voters taking part. The elections were declared to have been free and fair by a wide range of internal and external monitors.

38. The newly elected Government faced the daunting task of re-establishing a truly democratic structure and a spirit of accountable and transparent governance, both at the national and local level. It was not easy to reverse the non-democratic legacy nurtured over the past 20 years. During the first year in office, the new Government faced a number of crises. Turmoil within the security forces erupted on a number of occasions, resulting in an army fracas between two factions of the army that bombarded each other for the entire day of 23 January 1994. In April 1994, moreover, the Deputy Prime Minister, Mr. Selometsi Baholo, was extrajudicially killed.

39. In August 1994, King Letsie III suspended the Constitution and created an interim Government. The country responded to this coup by almost 100 per cent support for two stay-aways from work organized through the Lesotho Council of Non-Governmental Organizations (LCN). It became clear that there was no support from the nation for the usurpers; and when South Africa, Botswana, and Zimbabwe intervened diplomatically the coup collapsed and the democratically elected Government was restored to power.

40. Although the Council of State as well as heads of Churches had tried to facilitate dialogue and promote a spirit of reconciliation, there was still serious suspicion and lack of trust. The issues elaborated by Presidents Mandela, Mugabe and Masire, who are serving as guarantors of the settlement, expressed in an eight-point memorandum of understanding, were envisaged as being crucial for Lesotho in order to avoid a situation of continued and serious polarization. The eight points were:

1. Foreign guarantors will remain directly involved.

2. Non-governmental, religious and traditional bodies will be consulted.

3. The Commission of Inquiry into the monarchy will be cancelled and Moshoeshoe II reinstated to the throne.

4. The 1993 Constitution will be observed, especially in relation to human rights.

5. No action will be taken against King Letsie III.

6. Members of the August Provisional Council will be indemnified.

7. Laws and constitutional provisions on the public service and the security services will be respected.

8. All parties will respect the political neutrality and loyalty of the security services and the judiciary.

41. King Moshoeshoe II was restored to the throne in 1995 but died in January 1996. King Letsie III succeeded him.

42. In June 1997, political developments within the ruling BCP culminated in the formation of the Lesotho Congress for Democracy (LCD), led by the incumbent Prime Minister (Dr. Mokhehle had more members in Parliament, hence continued to effectively run the Government). Dr. Mokhehle has continued as head of Government under the LCD. Some legal experts within and outside Lesotho were of the opinion that the new party and the Government were unconstitutional. This has so far not been challenged in a court of law.

B. The executive

43. The organization of the executive can be broadly put into three distinct categories: (a) the monarchy, (b) elected officials and (e) appointed officials.

1. The monarchy

44. Under section 44 (1) of the Constitution the King is a constitutional monarch and the head of State. He is above partisan politics. The King in Lesotho is appointed by the College of Chiefs according to the customs and traditions of the Basotho. According to the customs a successor to the throne should be the eldest son of the reigning monarch; if such a successor is deemed not fit to occupy the throne, it will be the next son of the reigning monarch (sect. 45 (1) and (2) of the Constitution). As head of State the King has several functions. He has the power to appoint the prime minister, the ministers and assistant ministers on the advice of the Council of State (sect. 87 (I)), including holders of statutory positions like judges of the Court of Appeal and the High Court, the Ombudsman, the Attorney-General and the Director of Public Prosecutions.

45. The executive authority in Lesotho is vested in the King and is subject to the provisions of the Constitution, and is exercised by the King through officers or authorities of Government of Lesotho (sect. 86).

2. Elected officials

46. These are people who have been elected to the National Assembly through general elections held every five years. Elected officers include the prime minister, deputy prime minister, ministers, assistant ministers and members of the Cabinet.

47. The prime minister is appointed by the King through the advice of the Council of State. In its advice to the King, the Council of State selects a leader of the party that has won the election through pure numeric strength. The prime minister is the head of Government and charged with the day-to-day running of Government. He is expected to inform the King of the matters relating to affairs of State. The King appoints as prime minister the member of the National Assembly who appears to the Council of State to be the leader of the political party or coalition of political parties that commands the support of a majority of the members of the National Assembly (sect. 87 (2)).

48. The deputy prime minister is also appointed by the King through the prime minister's advice. His main duty is to exercise the prime minister's powers in the event of the latter's incapacitation.

49. The ministers and their assistants are charged with giving general direction to the running of government departments in line with the party manifesto. It must be mentioned that some of the ministers are not members of the National Assembly, but are members of an appointed body called the Senate.

50. The Cabinet is made up of the prime minister and his ministers. The Cabinet advises the King in the government of Lesotho, and is collectively responsible to the two Houses of Parliament (sect. 88 (1) and (2)).

3. Appointees

51. Appointees in the executive are of two categories: those that are appointed to bodies and those that are appointed to individualized statutory positions. An example of the former is the Council of State and of the latter the Principal Secretary, Government Secretary, Attorney-General and Director of Public Prosecutions.

52. The Council of State is made up of more than 10 individuals, including the prime minister, opposition political members, judges of the High Court, the commander of the defence force, the commissioner of police, a principal chief, three civilians, a member of the legal profession in private practice, the Attorney-General and the Speaker of the National Assembly. The function of this body is to assist the King in the discharge of his functions, some of which have already been mentioned.

53. The National Planning Board is made up of people with special abilities who could contribute to the development planning functions of the board. The Planning Board is allowed to have not more than 24 members. The functions of the Board can broadly be defined as the preparation of economic development plans with particular emphasis on conservation and the use of land and other natural resources.

54. Since the ministers are expected only to give generalized guidance within their allocated portfolios in the running of the departments entrusted to their leadership, the position of Principal Secretary, established in accordance with section 96 of the Constitution, is pivotal. Principal Secretaries are responsible to the minister they are serving under and their main function is the day-to-day running of their respective department. They act as links between the ministers and other executives in their departments, and they also liaise between the minister and members of the public.

55. The Government Secretary, on the other hand, handles affairs of Cabinet through directives of the Prime Minister (sect. 97 (1) and (2)).

4. The legislature

56. Section 54 of the Constitution establishes Parliament, which consists of the King, the Senate and the National Assembly. The Senate consists of 22 principal chiefs and 11 other senators nominated by the King acting in accordance with the advice of the Council of State (sect. 55 of the Constitution). The National Assembly consists of 80 members elected in accordance with the provision of the Constitution (sect. 56).

III. GENERAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Legal framework

57. The democratically elected Government of Lesotho places a high premium on respect for, and promotion and protection of human rights. Pursuant to this, the Ministry of Justice and Prisons was redesignated the Ministry of Justice and Human Rights in April 1993, with a view to realizing this objective. Cabinet approved the establishment of a Human Rights Unit within the Ministry on 12 September 1995.

58. Fundamental human rights and freedoms are protected in chapter II of the 1993 Constitution of Lesotho, which is the supreme law of the land. They include the right to life, the right to personal liberty, freedom of movement and residence, freedom from inhuman treatment, freedom from slavery and forced labour, freedom from arbitrary search or entry, the right to respect for private and family life, the right to fair trial, freedom of conscience, freedom of expression, freedom of peaceful assembly, freedom of association, freedom from arbitrary seizure of property, freedom from discrimination, the right to equality before the law and equal protection of the law, and the right to participate in Government.

59. In addition to the Constitution, there are statutes which affect the enjoyment of the above-mentioned rights. These statutes will be reviewed by a Law Reform Commission which was established by The Law Reform Commission Act No. 5 of 1993 and whose terms of reference include the review of those laws that are not compatible with the 1993 Constitution; suggestions for repeal of laws which are archaic and unconstitutional; and consolidation of laws. Among the laws to be reviewed are: Part III of the Internal Security Act No. 24 of 1984, dealing with detention for investigation of subversive activities; section 42 of the Criminal Procedure and Evidence Act (CP&E) 1981 authorizing the killing of fleeing suspects; section 229 (2) of

the CP&E on the admissibility of pointing out evidence which is otherwise inadmissible; section 34 of the Police Order 1971 dealing with prescribed actions; section 178 (6) of the Defence Force Order No. 17 of 1993; the laws governing the police, military and Security Service which will provide for a stricter regulation of the use of firearms (these laws should actually prohibit the retention of service firearms by members of the respective services when they are off duty); regulations for the three above-mentioned services setting out a code of conduct for those responsible for the arrest, detention and interrogation of suspects (the code should specifically prohibit the use of torture and inhuman or degrading treatment); the Inquest Proclamation No. 37 of 1954 in order to empower the Director of Public Prosecutions to initiate the holding of inquests; section 30 of the Finance Order 6, 1988 relating to surcharges to be strictly enforced whenever the State has had to compensate victims of the use of force by police and the security forces.

60. Principles of State policy are contained in chapter 3 of the 1993 Constitution. They are, however, not enforceable by any court, but are subject to Lesotho's economic capacity and development. These principles of State policy entail rights of a socio-economic nature, and include equality and justice, protection of health, provision for education, opportunity to work, just and favourable conditions of work, protection of workers' rights and interests, protection of children and young persons, rehabilitation, training and social rehabilitation of disabled persons, economic opportunities, participation in cultural activities and protection of the environment.

61. With respect to derogation, the Constitution provides in section 21 (1) that

> "(1) nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 6 (Right to personal liberty), section 18 (Freedom from discrimination), or section 19 (Right to equality before the law and equal protection of the law) of this Constitution to the extent that the Act authorises the taking, during any period when Lesotho is at war or when a declaration of emergency exists under section 23 of this Constitution, of measures that are necessary in a practical sense in a democratic society for dealing with the situation that exists in Lesotho during that period.
>
> "(2) Where a person is detained by virtue of any such law as is referred to in subsection (I) the following provisions shall apply.
>
> "(a) he shall, as soon as reasonably practicable after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

"(b) not more than fourteen days after the commencement of his detention notification of his detention shall be published in the Gazette stating that he has been detained and giving particulars of the provisions of law under which his detention is authorised.

"(c) not more than one month after his detention, and thereafter during his detention at intervals of not more than six months, his case shall be investigated by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;

"(d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the investigation of the case of the detained person; and

"(e) at the hearing of his case by the tribunal appointed for the investigation of his case he shall be permitted to appear in person or by a legal representative of his own choice.

"(3) on any investigation by a tribunal in pursuance of this Section of the case of a detained person, the tribunal shall make recommendations concerning the expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendation."

B. Enforcement by the courts and other tribunals or administrative authorities

62. In this regard Lesotho follows the English common law approach observed in the majority of States of the British Commonwealth, whereby international conventions and covenants are not invoked directly in domestic courts, that is they are not self-executing. They have to be transformed into internal laws by Parliament or administrative regulations by administrative bodies in order to be enforced. Unless specifically implemented by domestic law-making procedures, an international norm is not, of itself, part of our domestic law. This issue was raised during the deliberations of the Workshop on Administrative Law, held in Lesotho Sun from 21 to 23 August 1995. The Workshop observed that the Harare Declaration of Human Rights, 1989 which endorsed the Bangalore Principles, 1988 would be taken as offering guidelines on domestic application of international human rights norms.

63. The Bangalore Principles provide that it is within the proper nature of judicial process for national courts to have regard to international human rights norms, whether or not incorporated in domestic law, for the purpose of resolving ambiguity or uncertainty in national constitutions and legislation. Hitherto we have not nad any case in court on this point.

C. The judicial and other administrative competent authorities having jurisdiction affecting human rights

64. The 1993 Constitution provides for the judicature in chapter XI. Section 118 (1) confers judicial power on the courts. It states that the judicial power shall be vested in the courts of Lesotho, which shall consist of:

(a) A Court of Appeal;

(b) A High Court;

(c) Subordinate courts and courts-martial;

(d) Such tribunals exercising a judicial function as may be established by Parliament.

In subsection (2) the Constitution guarantees the independence of the judiciary when it provides that the courts shall, in the performance of their functions under the Constitution or any other law, be independent and free from interference and subject only to the Constitution and any other law. Subsection (3) provides that the Government shall accord such assistance as the courts may require to enable them to protect their independence, dignity and effectiveness, subject to the Constitution and any other law.

1. The Court of Appeal

65. The Court of Appeal was established by section 123 (1) of the Constitution, which states that there shall be for Lesotho a Court of Appeal which shall have jurisdiction and powers as may be conferred on it by the Constitution or any other law. The judges of this court include the President and such number of justices of appeal as may be prescribed by Parliament. The Chief Justice and puisne judges of the High Court are ex officio (sect. 123 (2) (a) and (b); see Court of Appeal Act No. 10, 1978). The President of the Court is appointed by the King on the advice of the prime minister. Section 123 (5) provides for the Court of Appeal to sit outside Lesotho. This is due, inter alia, to the fact that there are no indigenous judges of the Court of Appeal; most of them are from South Africa. The justices of the Court of Appeal are appointed by the King on the advice of the Judicial Service Commission, after consultation with the President of the Court (sect. 124 (1) and (2)).

66. A justice of the Court of Appeal must have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament, or a court having jurisdiction in appeals from such a court. Such a person must have held such qualification for a period of not less than seven years (sect. 124 (3) (a) (i) and (ii)).

2. The High Court

67. The High Court was established by section 119 (1) of the Constitution. It reads: "There shall be a High Court which shall have unlimited original

jurisdiction to hear and determine any civil or criminal proceedings and the power to review the decisions or proceedings of any subordinate or inferior court, court-martial, tribunal, board or officer exercising judicial, quasi-judicial or public administrative functions under any law and such jurisdiction and powers as may be conferred on it by this Constitution or by or under any other law" (see The High Court Act No. 5, 1978).

68. The judges of the High Court are the Chief Justice, who is appointed by the King acting in accordance with the advice of the Prime Minister (sect. 120 (1)), and the puisne judges, who are appointed by the King acting in accordance with the advice of the Judicial Service Commission.

69. To be eligible for appointment as a judge of the High Court one must either have held the office as a judge of a court having unlimited jurisdiction in criminal and civil matters in a Commonwealth country or country prescribed by Parliament (sect. 120 (3) (1)) or must have been a legal practitioner in terms of the Legal Practitioners Act, 1983 for a period of not less than five years (sect. 120 (ii) and (b)).

70. Plans are also under way for the establishment of a courts-martial appeal court. See section 3, First Amendment to the Constitution Act No. 1 of 1996.

3. Subordinate courts, courts-martial and tribunals

71. These courts were established under section 127 of the Constitution of 1993 which states that Parliament may establish courts subordinate to the High Court, courts-martial and tribunals, and any such court or tribunal shall, subject to the provisions of the Constitution, have such jurisdiction and power as may be conferred on it by or under any law (see, e.g. The Subordinate Courts Order No. 9 of 1988, Central and Local Courts, Proclamation No. 62 of 1938).

72. The subordinate courts and tribunals are precluded from interpreting provisions of the Constitution. In the event that a subordinate court or tribunal is seized with the matter, and where any question as to the interpretation of the Constitution arises in any proceedings, if the subordinate court or tribunal is of the opinion that the question involves a substantial question of law, the subordinate court or tribunal shall, if any party to the proceedings so requests, refer the question to the High Court (sect. 128, Constitution).

4. The Labour Court

73. The Labour Court was established under the Labour Code Order No. 24 of 1992, in terms of section 22 (1). It is presided over by a president appointed in terms of section 23 (1) (a). There is also provision for the appointment of deputy presidents as the Minister may consider necessary, as well as the appointment of two ordinary members (see sect. 23 (1) (b) and (c)).

74. The Labour Court, under section 24, has the power, authority and civil jurisdiction, to, inter alia, inquire into and decide the relative rights and duties of employers, employees and their respective organizations in relation to any matter referred to the Court under the provisions of the Code, and to award appropriate relief in cases of infringement. This Labour Court is not a subordinate court. It is a court of equity enjoined to keep the scales of justice in balance between the conflicting demands of employer and employee, as was held in the Court of Appeal case (CIV) No. 29 of 1995 between the Attorney-General and the Lesotho Teachers Trade Union and Others.

5. The Office of Ombudsman

75. The Office was established by section 134 (1) of the 1993 Constitution, which provides that there shall be an Ombudsman who shall be appointed, subject to the provisions of subsection (2), by the King acting in accordance with the advice of the prime minister for a term not exceeding four years.

The functions of the Ombudsman may include the following:

"(1) ...

"(a) investigate action taken by any officer or authority referred to in subsection (2) in the exercise of the administrative functions of that officer or authority in cases where it is alleged that a person has suffered injustice in consequence of that action; and

"(b) perform such other duties and exercise such other powers as may be conferred on him by an Act of Parliament.

"(2) Subject to such exceptions and conditions as may be prescribed by Parliament, the provisions of subsection (1) (a) shall apply in respect of any action taken by the following officers and authorities:

"(a) any department of Government or any member of such department;

"(b) any government authority and the members and officers of a local government authority;

"(c) any statutory corporation and the members and persons in the service of a statutory corporation.

"(3) The Ombudsman shall make a written report of every investigation undertaken by him which:

"(a) shall include a statement of the action, if any, taken by the officer or authority concerned as a consequence of such investigation; and

"(b) may include a recommendation as to what remedial action, including the payment of compensation, should be taken, and the Ombudsman shall submit annually to Parliament a summary of such reports.

"(4) In the exercise of his functions under this section the Ombudsman shall not be subject to the directions or control of any other person or authority. This provision provides autonomy to the office of the Ombudsman."

76. In the period November 1993 to March 1994, the office of Ombudsman received 44 complaints. Of these five were cases pending in court, six were cases in the competence of statutory bodies and three were considered too trivial to merit investigation.

6. The Public Service Commission

77. The Commission is one of the competent authorities having jurisdiction affecting human rights. The Public Service Commission was established under chapter XIII, section 136 (1), of the 1993 Constitution, which states that there shall be a Public Service Commission which shall consist of a chairman and not less than two or more than four other members, who shall be appointed by the King, acting in accordance with the advice of the Judicial Service Commission.

78. The Public Service Commission is charged with the responsibility of appointing public officers. Section 137 (1) provides that subject to the provisions of the Constitution, the power to appoint persons to hold or act in offices in the Public Service (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall be vested in the Public Service Commission.

7. The Judicial Service Commission

79. The Judicial Service Commission established in terms of section 132 (1) of the Constitution states that there shall be a Judicial Service Commission which shall consist of:

(a) The Chief Justice, as Chairman;

(b) The Attorney-General;

(c) The Chairman of the Public Service Commission or some other member of that Commission designated by the Chairman thereof; and

(d) A member appointed from amongst persons who hold or have held high judicial office who shall be appointed by the King acting in accordance with the advice of the Chief Justice and is hereinafter referred to as the appointed member.

8. The Defence Commission

80. The Defence Commission was established by section 145 (1) of the Constitution. Its function is provided in subsection (2), which states that the Commission shall be responsible for the appointment, discipline and removal of members of the defence force, members of the police force and members of the Prison Service.

81. The Constitution has, however, been amended (see First Amendment to the Constitution Act No. 1 of 1996), which amendment introduces the element of civilian control of the defence force. The amendment disbands the Defence Commission.

9. Remedies available to individuals

82. Following are remedies available to an individual who claims that any of his rights have been violated: these are: habeas corpus, bail, declaration order, interdict and damages. With the exception of bail, which is provided for in section 99-117 of the Criminal Procedure and Evidence Act No. 7 of 1981, the rest of the remedies are what we call common law remedies. The term common law should not be confused with English common law. It refers to the jurisprudence developed and expounded by Roman Dutch law jurists.

83. Section 99 (1) of the Criminal Procedure and Evidence Act provides that every person committed for trial or sentenced in respect of any offence except sedition, murder or treason may be admitted to bail at the discretion of the magistrate. Attempted murder and armed robbery were added by section 3 of the Criminal Procedure and Evidence Act (CPE) Amended Act No. 33 of 1984. Subsection (2) provides that the refusal by the magistrate who has committed any person for trial, to grant such person bail shall be without prejudice to such person's rights under section 108.

84. As far as bail is concerned, it must not be excessive, otherwise the accused is entitled under section 108 to appeal. The section states that, where an accused person considers himself aggrieved (a) by the refusal of any magistrate to admit him to bail; or (b) by the magistrate having required excessive bail or having imposed unreasonable conditions, he may appeal against the decision of the magistrate to the High Court which shall make such order as seems just in the circumstances.

85. The Court may impose very stringent conditions for bail if, in the opinion of the Court, the life of the alleged victim is still in balance, or the alleged victim remains critically ill for a long time, or is in coma for several months (see Matsela Mongali and 14 Others v. The Director of Public Prosecutions, Lesotho Law Reports and Legal Bulletin 1991 - 92, p. 106).

86. In practice, bail applications are heard by the High Court on Mondays. This is purely for administrative purposes, but not a legal requirement.

10. Institutional machinery with responsibility for overseeing the implementation of human rights

87. The Human Rights Unit mentioned above will be complemented by a National Commission on Human Rights, whose establishment was also approved. The terms of reference of the Unit are as follows:

(a) Dissemination of information on human rights to law enforcement agencies, non-governmental organizations and other interested groups, and the public at large, through documentation, pamphlets, fact sheets, etc.;

(b) Mounting of human rights training programmes for law enforcement agencies, non-governmental organizations and other interested groups;

(c) Monitoring domestic legislation and ensuring its compatibility with international human rights instruments, to the extent permissible within the cultural and historical setting;

(d) Undertaking reporting obligations to Parliament and United Nations committees on international human rights instruments ratified by Lesotho, e.g. the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

88. The National Commission on Human Rights will be established and will be charged with investigation of human rights abuses and will inspect and monitor places where human rights violations are likely to take place, such as prisons and police stations.

IV. INFORMATION AND PUBLICITY

A. Governmental efforts

89. The Human Rights Unit has as one of its mandates the dissemination of information on human rights to law enforcement agencies, non-governmental organizations and other interested groups and the public at large. To this end the Unit has had a five-component human rights programme of cooperation with the Danish Centre for Human Rights comprising:

(a) A national Seminar on human rights and democracy held from 21 to 23 August 1995;

(b) In-service training courses on human rights, juvenile justice and the administration of justice held from October 1995 to November 1997;

(c) Research on corruption and economic crime in Lesotho conducted from July 1995 to December 1996;

(d) Law reporting and legal bulletin publication which has so far produced the High Court and Court of Appeal decisions of 1991-1992 and 1993-1994; and

(e) Support to the Community Legal Resource and Advice Centre, a non-governmental organization undertaking paralegal training.

90. The Unit is also working closely with other parties concerned, including His Majesty's Palace and the Ministry of Education, to revive a practical street law project for secondary and high schools intended to bring about legal awareness and sensitivity to human rights.

91. The Ministry of Justice and Human Rights commissioned the African Languages Department of the National University of Lesotho to translate the major human rights instruments into Sesotho. These will be printed shortly for dissemination.

B. Non-governmental efforts

92. The Community Legal Resources and Assistance Centre has been actively engaged in sensitizing communities on human rights issues. They have also conducted training of paralegals, and have also published pamphlets in Sesotho on individual rights. The NGO Women in Law in Southern Africa and others have also done a lot by way of workshops to sensitize women on human rights issues.